


ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS <i>Ruth E. Rodriguez Borges</i> <i>on behalf of her minor child AGOR</i>	DEFENDANTS <i>Debtor Manuel A. Domenech Rodriguez</i> <i>Chapter 7 Trustee Wiggert to Hugo Mender</i>			
ATTORNEYS (Firm Name, Address, and Telephone No.) <i>Luis A. Melendez Albizu, esq.</i> <i>117 Ave. De Diego, Urb. San Francisco</i> <i>San Juan, P.R. 00927-6310</i> <i>Tel. (787) 758-1549</i>	ATTORNEYS (If Known) <i>William Davila de Pedro, esq.</i> <i>Midtown Bldg. Suite 311</i> <i>420 Ponce de Leon, San Juan, P.R. 00918</i> <i>Tel. (787) 759-8090</i>			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) <i>Declaration, Adjudication, Collection, enforcement and</i> <i>Declaration of Non-Discharge of Domestic Support</i> <i>obligation.</i>				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width:100%; border: none;"> <tr> <td style="width:50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width:50%; 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<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$ <i>80,700.00</i>		
Other Relief Sought <i>Plus interests, mandatory attorneys fees,</i> <i>and enforcement of state judgment through contempt.</i>				

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <i>Manuel A. Domenech Rodriguez</i>		BANKRUPTCY CASE NO. <i>10-05835 (BKT)</i>
DISTRICT IN WHICH CASE IS PENDING <i>Puerto Rico</i>	DIVISION OFFICE -	NAME OF JUDGE <i>Tester</i>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF <i>N/A</i>	DEFENDANT <i>N/A</i>	ADVERSARY PROCEEDING NO. <i>N/A</i>
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE <i>Aug. 19, 2010</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <i>Luisa A. McIndee Albizu</i>	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE:

MANUEL ANTONIO DOMENECH
RODRÍGUEZ aka MANUEL ANTONIO
DOMENECH

Debtor

BKRTCY. CASE NO. 10-05835 (BKT)

CHAPTER 7

RUTH E. RODRÍGUEZ BORGES on behalf
of minor daughter A.G.D.R.

Plaintiff

vs.

MANUEL ANTONIO DOMENECH
RODRÍGUEZ aka MANUEL ANTONIO
DOMENECH; WIGBERTO LUGO
MENDER

Defendant

ADV. PRO. NO. 10-

**COMPLAINT FOR DECLARATION, ADJUDICATION, COLLECTION,
ENFORCEMENT, AND DECLARATION OF NON-DISCHARGE
OF DOMESTIC SUPPORT OBLIGATION**

TO THE HONORABLE COURT:

Plaintiff Ruth E. Rodríguez Borges on behalf of her minor daughter A.G.D.R. through her undersigned counsel, and respectfully states, alleges and prays:

I. JURISDICTION AND VENUE

1. This Honorable Court has exclusive jurisdiction of the instant “core proceeding” “arising in or related to a case under title 11”, pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a) & (b)(1) & (b)(2)(A), (B), (I), (J) & (O) and Fed. R. Bankr. P. 7001. Moreover, the “domestic relations exception”

to federal jurisdiction does not apply to the present Complaint, since the present case seeks the enforcement in bankruptcy court of a pre-petition child support obligation of the debtor previously ordered by a State Court, as permitted by Barber v. Barber, 21 How. 582 (1859), and as subsequently interpreted in Ankenbrandt v. Richards, 504 U. S. 689 (1992) and Marshall v. Marshall, 547 U.S. 293 (2006), as well as a declaration, allowance and enforcement of Plaintiffs' claim as a priority and non-dischargeable claim in bankruptcy as per 11 U.S.C. §§ 502(b), 507(a)(1), and 523(5) & (15).

2. This Honorable Court has venue pursuant to 28 U.S.C. § 1409(a).

II. PARTIES

3. Plaintiff Ruth E. Rodríguez Borges ("Mrs. Rodríguez" or "Plaintiff") is the former spouse of Debtor/Defendant Manuel Antonio Domenech Rodríguez aka Manuel Antonio Domenech, and the mother and custodial parent with *patria potestas* of A.G.D.R., the minor child of Debtor/Defendant Manuel Antonio Domenech Rodríguez aka Manuel Antonio Domenech. Plaintiff and her minor daughter reside in #1670 Verbena St., Urbanización San Francisco, San Juan, P.R. 00927, and a Creditor in the above captioned Chapter 7 proceeding.

4. Defendant Manuel Antonio Domenech Rodríguez aka Manuel Antonio Domenech ("Mr. Domenech" or "Defendant") is the Debtor in the above captioned case, the former spouse of Plaintiff Mrs. Rodríguez, and the father of A.G.D.R. Defendant Mr. Domenech resides in Apt. 14-D Condominio El Paraiso, #1560 Paraná St., San Juan, P.R. 00926.

5. Defendant Wigberto Lugo Mender is a nominal party being sued in his official capacity as the Chapter 7 Trustee assigned to Debtor Mr. Domenech's Chapter 7 bankruptcy case. Defendant Chapter 7 Trustee has main offices located at Lugo Mender & Co., Centro Internacional de Mercadeo, Carr. 165 Torre 1, Suite 501, Guaynabo, P.R. 00968. Tel. (787) 707-0404.

III. AVERMENTS TO ALL CAUSES OF ACTION

6. Plaintiff hereby reasserts the averments contained in Paragraphs 1-5.
7. Plaintiff Ruth E. Rodríguez Borges and Defendant Debtor Manuel Antonio Domenech Rodríguez were married in 1984.
8. The parties later divorced via Judgment issued on December 21, 2000, in the case Ruth Rodríguez Borges v. Manuel A. Domenech Rodríguez, Civil No. KDI 2000-2183 (701), by the Puerto Rico Court of First Instance, San Juan Part. According to the Divorce Judgment, Manuel A. Domenech Rodríguez was ordered to pay \$1,500.00 per month in child support for her minor child A.G.D.R. This child support obligation would increase to \$2,000.00 per month once the parties transferred to each other their respective interests in two pieces of real property located in San Juan and Humacao, which happened with the execution on November 25, 2002, of Deed No. 303 of *Liquidation and Settlement of Conjugal Partnership and Modification of Mortgage*.
9. Defendant Debtor Mr. Domenech paid \$1,500.00 per month in child support from December 2000 until November 2002.
10. Upon execution of Deed No. 303 on November 25, 2002, the child support obligation increased to \$2,000.00 per month.
11. From December 2002 until February 2003, Debtor paid only \$1,500.00 per month in child support, thereby creating a debt of \$1,500.00.
12. From March 2003 until June 2010, Debtor paid only \$1,100.00 per month in child support, thereby creating an additional debt of \$79,200.00
13. Defendant Debtor Manuel Antonio Domenech Rodríguez filed his Chapter 7 Bankruptcy Petition on June 30, 2010.

14. Prior to June 30, 2010, Defendant Debtor Manuel Antonio Domenech Rodríguez accumulated a pre-petition debt for owed child support in the amount of \$80,7000.00. As part of his original Petition, Defendant Debtor Mr. Domenech did not include Plaintiffs' claim for child support in any part of the Petition.

15. That prior to June 30, 2010, Defendant's minor daughter A.G.D.R. received Social Security benefits which are not considered child support payments as a matter of law.

16. That prior to June 30, 2010, Defendant's minor daughter A.G.D.R. received from her father certain voluntary gifts, presents and handouts, such as the payment of school tuition, which are not part of the child support payments provided in the Divorce Judgment, and thus cannot be legally credited to Defendants' pre-petition child support debt, as per the Puerto Rico Supreme Court holdings in Toro Sotomayor v. Colon Cruz, 2009 TSPR 134 and Otero Fernandez v. Alguacil, 116 D.P.R. 733 (1985).

17. That the pre-petition debt for child support owed by Defendant is a "domestic support obligation" as said term is defined in 11 U.S.C. § 101(14A).

18. That on July 27, 2010, Plaintiff Ruth E. Rodríguez Borges filed her *Proof of Claim* in Defendant's bankruptcy case, in which she claimed \$80,700.00 in pre-petition domestic support obligation, which is entitled to priority under 11 U.S.C. § 507(a)(1).

19. That Plaintiff's priority claim in the amount of \$80,700.00 in pre-petition owed domestic support obligation is exempted from discharge as per 11 U.S.C. § 523(5) & (15).

20. That on August 12, 2010, Defendant Debtor Mr. Domenech filed an *Objection* (**Dkt. #20**) to Mrs. Rodríguez' claim for claimed \$80,700.00 in pre-petition domestic support obligation. In addition, Defendant Debtor Mr. Domenech also filed an *Amended Schedule E* (**Dkt. #21**) in which he

disputed Mrs. Rodríguez' claim, asserted (incorrectly) that the claim was only for \$9,024.00, and then stated that he accepted \$3,244.00 of his pre-petition arrears in his child support obligation. In other words, Defendant Debtor Mr. Domenech is factually and legally disputing both the nature and the amount of the claim asserted by Plaintiff.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION (DECLARATORY JUDGMENT)

21. Plaintiff hereby reasserts the averments contained in Paragraphs 1-20.

22. There is currently a factual and legal dispute regarding to the nature and amount of Plaintiffs' claim in bankruptcy for owed pre-petition child support, that is ripe for adjudication via a declaratory judgment.

23. Plaintiff hereby requests that the Honorable Court find and declare that Defendant Debtor Mr. Domenech owes his daughter A.G.D.R. \$80,700.00 in pre-petition child support.

24. Plaintiff further requests that the Honorable Court find and declare that, as a matter of federal and state law, any payments received by A.G.D.R. in Social Security benefits are not part of the child support obligation imposed on Defendant Debtor Mr. Domenech in the Divorce Judgment issued on December 21, 2000, in the case Ruth Rodríguez Borges v. Manuel A. Domenech Rodríguez, Civil No. KDI 2000-2183 (701), and that instead they are federal benefits to which A.G.D.R. was legally entitled to receive by federal law independent of Mr. Domenech's domestic support obligation imposed by state law.

25. Plaintiff further requests that the Honorable Court find and declare that any voluntary gifts, presents and handouts, received by A.G.D.R. from her father Defendant Debtor Mr. Domenech,

including the payment of school tuition, are not part of the child support obligation imposed in the Divorce Judgment, and thus cannot be legally credited to Defendants' pre-petition child support debt, as per the Puerto Rico Supreme Court holdings in Toro Sotomayor v. Colon Cruz, 2009 TSPR 134 and Otero Fernandez v. Alguacil, 116 D.P.R. 733 (1985).

26. Plaintiff further requests that the Honorable Court find and declare that the debt for \$80,700.00 owed by Defendant Mr. Domenech in pre-petition child support is a "domestic support obligation" as said term is defined in 11 U.S.C. § 101(14A), that said pre-petition domestic support obligation is entitled to priority under 11 U.S.C. § 507(a)(1), and that it is exempted from discharge as per 11 U.S.C. § 523(5) & (15).

**SECOND CAUSE OF ACTION
(COLLECTION AND ENFORCEMENT OF OWED CHILD SUPPORT)**

27. Plaintiff hereby reasserts the averments contained in Paragraphs 1-26.

28. Plaintiff hereby seeks and requests the collection and enforcement of the pre-petition child support debt owed by Defendant Debtor Mr. Domenech in the amount of \$80,700.00.

29. In view thereof, Plaintiff requests that this Honorable Court enter a money judgment awarding Plaintiff (on behalf of her minor daughter A.G.D.R.) in the amount of \$80,700.00 which represents the pre-petition child support owed by Defendant Debtor Mr. Domenech, plus legal interests.

30. Plaintiff further request that the Honorable Court find and declare that Defendant Mr. Domenech is in contempt of the child support obligations imposed in the Divorce Judgment issued on December 21, 2000, in the case Ruth Rodríguez Borges v. Manuel A. Domenech Rodríguez, Civil No. KDI 2000-2183 (701), and that it order Defendant Mr. Domenech to pay \$80,700.00 owed to his daughter in pre-petition child support under pain of incarceration for civil contempt.

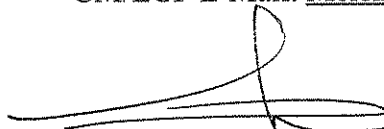
31. Plaintiff finally requests that the Honorable Court order Defendant Mr. Domenech to pay Plaintiff an amount no less than \$25,000.00 in mandatory attorneys fees under Article 22 of Puerto Rico's Child Support Law, (8 L.P.R.A. § 521(1)), as well as under Puerto Rico Rule 44.1(d) of Civil Procedure on temerity, and under 28 U.S.C. § 1927.

WHEREFORE, it is respectfully requested that this Honorable Bankruptcy Court **ENTER THE DECLARATORY AND MONETARY JUDGMENTS** sought herein, as well as the attorneys fees requested herein, plus costs and interests.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on August 19, 2010.

LAW OFFICES OF LUIS A. MELÉNDEZ-ALBIZU
Counsel for Plaintiff
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/s/Luis A. Meléndez-Albizu, Esq.
US Dist. Ct of P.R. Bar No. 205703